

DHCD Force Account Policy and Procedures

October 2019

Project Approval:

Force Account work is defined as the completion of a capital project with an LHA's own in-house work force, rather than putting the project out to bid for construction by a General Contractor. The project must be approved by DHCD via the LHA's CIP. The project should be clearly labeled as a Force Account project when the CIP is submitted for review. If the cost of the work is to exceed \$25,000, the LHA will also need to submit a detailed request to their Project Manager using DHCD's template 'Force Account Proposal' document. If the cost is between \$10,000 and \$25,000, the LHA should email their Construction Advisor with a scope of work, but does not need to complete the form. Work cannot begin until the LHA has received DHCD approval.

Before submitting a Force Account Proposal, the LHA should confirm with their local building department that their project does not require building permits or a design professional. In some cases, when the scope of a project goes beyond cosmetic and covers an area over 35,000 cubic feet, it can trigger a requirement for a design professional and/or workers with specific licensures. The LHA should be ready to confirm to DHCD that they have conferred with their building department to make this determination.

Personnel:

While the intent of the Force Account program is to allow LHAs with on-staff tradespeople to realize cost and time savings by using that staff to complete capital projects, DHCD is willing to approve procured labor on a case-by-case basis provided a quantifiable cost and time savings to the LHA is still realized and the LHA appropriately procures. Other acceptable force account staffing includes an LHA utilizing staff from another LHA.

Construction procurements involving labor are governed by MGL Ch. 149.

NOTE: Procurements for labor must include both the wage rates and estimated quantities of hours requested for the various tradespersons needed so that proposals can be compared on an equivalent basis.

NOTE: RCATs and DHCD have developed several contracts for ongoing repair and maintenance using a Ch. 149 front-end. They can be found here: <http://rcat.tauntonhousing.com/Documents.aspx>

When billing for LHA staff time, hours are to be billed at the employee's regular hourly rate. This includes hours by part-time staff who are working beyond their regular hours up to what would be a full-time week (40 hours). If the LHA is using overtime, it should document in its procurement record the reason for its use. Please note that capital funds such as Formula Funding grants can NOT be used to reimburse LHA staff retirement benefits. These costs must be paid from the operating budget.

Materials:

Per the Massachusetts General Law and the Attorney General's guidance, purchased materials are considered "construction materials" if they are purchased for a specific construction project. As such, they fall subject to the construction procurement rules under MGL Ch 30 Sec 39M or MGL Ch 30B Sec 5:

MGL Ch 30 Sec 39M

1. For materials valued less than \$10,000, use sound business practices ;

DHCD Force Account Policy and Procedures

October 2019

2. For materials valued from \$10,000-\$50,000, use a written scope of work to solicit written responses from no fewer than 3 vendors who customarily sell the materials you seek and advertise in the Central Register, COMMBUYS, Authority's website, and post at the Authority's office. Advertising can be waived if at least 2 written responses are obtained from vendors on a statewide or blanket contract. A 100% payment bond is required for purchases over \$25,000;
3. For materials valued at more than \$50,000, use a sealed bid process, advertising in the newspaper, Central Register, COMMBUYS and post at the Authority's office. A 5% bid deposit is required as is a 100% payment bond.

MGL Ch 30 Sec 5

1. For purchase of any amount: Use a sealed bid process, advertising in the newspaper, Central Register, COMMBUYS, and post at the Authority's office. A 100% payment bond is required for purchases over \$25,000.

LHAs may use materials that they have in stock through normal course of business but cannot procure materials for force account work as non-construction supplies. DHCD will only reimburse LHAs for materials procured in accordance with state law. DHCD will review procurement for material purchases exceeding \$25,000.

Reimbursement:

After proposal approval, the LHA will need to submit a schedule of values with labor and materials broken out, to be invoiced against. Prior to the end of construction, and before the final payment is issued, DHCD will reconcile estimated amounts vs actual costs. LHA must submit a final detailed summary sheet, including a breakdown of actual labor and materials vs. estimated.

Along with a Certificate of Compliance, the request for Formula Funding reimbursement should include an invoice for labor hours that indicates the name of the staff person(s) that completed the work, number of hours worked, the dates, the hourly rate (excluding retirement benefits), and indicate whether it is a regular or overtime rate. Include all invoices for all materials for which the LHA is seeking reimbursement.

Costs for wages and materials for capital projects may be expenses in the 'construction' portion of the Form 80 and are not subject to the 10% cap on administrative costs. Employee benefits can be expenses in this line and are restricted to the following:

- FICA- Employer's share of social security tax
- FUTA- Employer's share of unemployment tax
- GIC- Employer's share of group health insurance

Invoices should include both a summary sheet showing draw down against the schedule of values as well as detailed backup for all expenses. DHCD will audit selected force account projects through the annual Agreed Upon Procedures (AUP) process.

October 2019

Bid Splitting & Acceptable Use of Contractors:

Bid splitting involves intentionally dividing a project for the purpose of evading the requirements of the procurement laws. This includes obtaining multiple separate single trade contracts for a complex project in which the total construction cost exceeds \$10,000, instead of working through a general contractor. Phasing a larger project into multiple smaller projects in different fiscal years of a capital plan due to the limited availability of capital funding is not considered bid splitting.

With regards to hiring subcontractors for specialized work with construction costs exceeding \$10,000, the typical procurement and bidding processes apply to all subtrades. Housing Authorities, however, are not meant to act as general contractors; while an authority can procure a single contractor for specialized work, such as plumbing work in a vacant unit turnover force account job such as connecting, reconnecting or minor replacement of fixtures, if the job requires the authority to procure and coordinate multiple contractors it is acting as a general contractor and the project should have been bid in the traditional manner.

If procuring contractors for force account or general work, please note that authorities can solicit quotes through the statewide trade contracts on CommBuys. If using the statewide contract, the authority just needs to solicit three written quotes. These contracts can be for up to \$50,000 labor, with materials outside the cap. See <https://www.mass.gov/service-details/tradespersons-statewide-contracts> for more details.

Notes:

Each LHA's ability to participate in the Force Account program is dependent upon their capacity to complete these projects in an organized and transparent manner. DHCD will not reimburse LHAs for improperly procured labor or materials, or for projects that moved forward without DHCD's review and approval.

Attachments:

Attachment A: [Force Account Proposal Form](#)

Attachment B: [Change Order Form](#)

Attachment C: [Payment Cover Sheet](#)

Attachment D: [Payment Continuation Form](#)